Living Document

The U S Constitution is not a dead historical document but is, in the words of Saul K. Padover, "still a living one, meeting the needs, as it always has done, of a great, growing, powerful, technologically advanced self-governing republic. In duration, flexibility and underlying democratic wisdom, there is nothing quite like it anywhere else in the world."

This invaluable book, edited by an outstanding historian, author and political scientist, is a unique and important contribution to understanding the U S Constitution and the men who framed it. Beginning with the story of the making of the Constitution, it includes illuminating character sketches of the delegates, written by their contemporaries.

The complete text of the Constitution is given, followed by condensations of twelve historic decisions of the U S Supreme Court, selected for their variety to show the complexity of some of the problems that have arisen under the rule of the Constitution, and also to show some subtle shifts in interpretations of it.

An invaluable section of the book is its full and comprehensive indexed guide to the Constitution that contains detailed references and interpretative cross references to every topic in the Constitution, even to subjects that are implied rather than specifically mentioned. With this the reader can quickly discover what the Constitution says on any given point.

The Living U. S. Constitution



STORY • TEXT
FULLY INDEXED GUIDE
PORTRAITS OF THE SIGNERS

Presented With Historical Notes
by
SAUL K PADOVER



A MENTOR BOOK
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PART I

Story And Background

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1 The Story of the Making of the Const tution

Its world significance

The formation of the Constitution, which British Prime Minister Gladstone once described as "the most wonderful work ever struck off at a given time by the brain and purpose of man," is a story of great historic drama. Its significance transcends the boundaries of the United States, for it offers a lesson and example to peoples throughout the world. The American Constitution has turned out to be perhaps the most successful example in history of a legal instrument that has served both as a safeguard of individual freedom and as a ligament of national unity Today, several generations after it was put into shape, it is still a living document, meeting the needs, as it always has done, of a great, growing, powerful, technologically advanced, self-governing republic. In duration, flexibility, and underlying democratic wisdom, there is nothing quite like it anywhere else in the world.

The delegates

The gentlemen who met in the State House at Philadelphia in May 1787 to draw up the Constitution represented some of the best talents in America. Fifty five delegates had been chosen by twelve of the thirteen states, but not all of them attended the sessions, which continued for nearly four months. In the end only thirty nine signed the completed document. The aim of the delegates was the construction of a political framework that would both protect property against revolutionary expropriation and secure liberty from a potentially tyrannical government. What they wanted, in other words, was a government that would have power, but not exercise it capriciously or cruelly How they finally accomplished this is one of the marvels of history

Among the delegates were men with wide experience in government and business They were merchants from New England, judges from the middle states, planters from the South. Half of them were lawyers or government officials trained in law More than two-thirds had served in the Continental Congress. Some were governors. Many were highly

Benjamin Frankl[illegible] upon enlistment a [illegible] a day, half of it served in the morning and half in the afternoon. For the rum they came punctually, but for the prayers they did not Franklin, thinking about this, said "It is perhaps below the dignity of your profession to act as steward for the rum, but if you were [illegible] after prayers [illegible]

C[illegible] the convention, the men who not [illegible] shaped the Constitution of the United States, but also the early days of the Republic I wish to mention only, first, Alexander Hamilton and second, James Madison

Hamilton

Alexander Hamilton is one of the earliest American "success stories" His is a veritable Horatio Alger story with a tragic finish Foreign-born and of illegitimate birth, he not only married into the American aristocracy, but also occupied high public office. He was one of the most brilliant men in America, a friend of George Washington, and one of the [illegible]

[illegible] —and thus a real American.

At the ripe age of fifteen he came to New York and attended King's College (now Columbia University). In those days Hamilton was what we would call a "liberal" today As a political writer he attracted attention with his brilliant polem[illegible]

[illegible] as deepened when he married into the bluest of New York's blue-blooded families Hamilton was twenty-

three years old and already a famous man when he married Elizabeth, daughter of General Philip Schuyler For an immigrant boy this marital alliance was no mean achievement.

He had a powerful mind and he rose to the top rank of the legal profession. In 1787, at the age of thirty, he was already important enough to be one of the delegates to the Constitutional Convention General Washington was deeply attracted to the swift minded, brilliant Hamilton, and he made him his Secretary of the Treasury in the first American administration. At thirty-two Alexander Hamilton was to be the youngest member of the Cabinet in American history

Hamilton's later achievements as Secretary of the Treasury, though bitterly criticized by the Jeffersonian democrats of the day, must be ranked as epochal His hard, tough, unsentimental mind gave to the weak young Republic the guidance it desperately needed Hamilton established the national credit, stabilized the currency, encouraged manufactures, and above all he attracted the moneyed and propertied classes to the Republic

Hamilton did this with sharp realism He reasoned that only the wealthy and well-educated—many of whom had only contempt for democracy and entertained doubts as to the efficacy of a republic—could give the young government both prestige and cohesion To tie them to the unrespected struggling Republic, Hamilton later attracted them with chains of gold He did this with calculated cynicism for he had but a low opinion of most of mankind Viewing his tactics and analyzing his philosophy, one cannot escape the conclusion that Hamilton used low means for high ends

Contemporary democrats hated and feared him for Hamilton was an honest and a blunt man and he did not conceal his opinions He said that the people were a great beast At the Convention he blurted out Take mankind in general they are vicious ' Of course, he did not mean the aristocratic mankind, he meant the poor portion of mankind I cannot refrain from quoting a characteristic passage from one of his speeches at the Federal Convention

> Take mankind as they are and what are they governed by? Their passions One great error is that we suppose *mankind* more honest than they are Our prevailing passions are ambition and interest and it will ever be the duty of a wise government to avail itself of those passions, in order to make them subservient to the public good
> All communities divide themselves into the few and the many The first are the rich and well born, the other the

mass of the people The voice of the people has been said to be the voice of God, and howev[illegible] has bee[illegible] pe[illegible] d[illegible] p[illegible] u[illegible] advantage by a change, [illegible] as they cannot receive any good government. Nothing but a permanent body can check the imprudence of democracy Their turbulent and uncontrollable disposition requires checks.

Had Hamilton had his way, the United States might have become an aristocratic republic but [illegible] not prevail [illegible] Republic th[illegible] ity Whatev[illegible] of the Am[illegible] balance, es[illegible] after the government was set up, [illegible] skepticism serving as a the warm idealism of a Jefferson.

MADISON

James Madison, delegate from Virginia and future president of the United States, was then thirty-six years old and deeply learned in history and politics, both ancient and contemporary He knew more about American affairs than probably any man present. He was a powerful and lucid debater Despite his youth, his greatness was universally acknowledged. A disciple of Jefferson, whose lifelong friend he was to become, Madison was a middle-of-the-road statesman, conservative in economic matters and liberal in civil liberties He was humane and yet skeptical. Unlike Jefferson, Madison was not given to illusions about human nature, but, on the contrary, considered man as a self interested creature capable of evil, although not necessarily always evil. Since history taught him that humanity was nearly always its own enemy and that governments in the past had usually ended in tyranny, Madison visualized the creation of a new type of government that would not have the power or temptation to tyrannize over the citizens. This required careful and delicate safeguards that would be built into the governmental structure and become an integral part of it

In one of the profoundest paragraphs on politics that was ever written, Madison thus summarized his basic skeptical views of government in general

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dence and apologized for his inexperience in such matters, but hoped, he said, that he would not make too many mistakes. A committee was then appointed to draw up the rules for the convention and the delegates adjourned for the weekend.

THE RULES

They reassembled on Monday, May 28, and adopted the rules. These were strict and businesslike. One of the rules [illegible]

[illegible]

read a book, pamphlet or paper, printed or manuscript." The [illegible]

[illegible]

until 1819 [illegible] was kept from the American public. Not [illegible]

[illegible]

were made and distributed to every member. [illegible]

[illegible]

spoke [illegible]

"Gentlemen, [illegible]

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THE RULES:

They reassembled on Monday, May *28*, and adopted the rules. These were strict and businesslike. One of the rules shows that the convention had a high regard for its dignity. [illegible]

[illegible]

"Gentlemen—I am sorry to find that some member of this Body has been so neglectful of the secrets of the Convention as to drop a copy . . . I must entreat Gentlemen to be more careful, lest our transactions get into the News Papers, and disturb the public repose by premature speculations I know not whose Paper it is, but there it is"—he threw it on the table —"let him who owns it take it."

Then he bowed picked up his hat and, in the words of one of the delegates quitted the room with a dignity so severe that every Person seemed alarmed." No member ever dared claim that copy

MADISON S NOTES

Most of what we know of what happened in the convention is due to James Madison By common consent young Madison became the more or less official recorder of the convention He sat out in front, his back to Washington facing the delegates In this favorable position for hearing all that passed" he tells I noted in terms legible and in abbreviations and *marks intelligible to myself* what was read from the Chair or spoken by the members and losing not a moment I was enabled to write out my daily notes during the session or within a few finishing days after its close At the same time *he participated vigorously in the debates and contributed* greatly to the clarification of many issues Evenings he would check up with the delegates to make sure that his shorthand record was accurate It was a grueling task which Madison said *years later almost killed him, for he was small and frail.* His notes which were not published until after his death, constitute the most complete and priceless record of the convention

THE DEBATES

The debates were opened by Governor Edmund Randolph of Virginia He started out with a vigorous attack on the Articles of Confederation that makeshift constitution under which the states then maintained an ineffectual union and then he moved a series of fifteen carefully prepared (mostly by Madison) resolutions This so-called Virginia Plan became the basis of the whole subsequent discussion It called for a strong *national* government consisting of an executive a judiciary and a legislature the latter was to have two branches one elected by freemen and the other chosen by the state legislatures

On this the debate got into high gear and rolled along for two weeks Reduced to its essentials the great arguments centered around the two issues of democracy and states rights Should the people elect their representatives? Could the people be trusted with self government? If they were permitted to vote, was there not a danger that the numerous poor ... [illegible]

outvote the few rich, and, therefore, property would no longer be safe? Was it not better that gentlemen of social position, wealth, and education do the ruling? These were the most hotly debated questions Then there was the matter of the states What should be the relation between the big and the little ones? Was it right that tiny Delaware should have as many representatives as populous Virginia or Massachusetts? And were not the little states in danger of being swallowed up by the Big Three?

DEMOCRACY

On the question of democracy a large number of the delegates were outright skeptical and even hostile The distinguished looking Randolph started the debate with an attack on the dangers of democracy and the need to curb the people Massachusetts rich Elbridge Gerry (from whom we get the word *gerrymander*) remarked "The evils we experience flow from the excess of democracy" His colleague Rufus King agreed with him

Pennsylvania's wealthy and brilliant Gouverneur Morris said "The people never act from reason alone," but are the "dupes of those who have more knowledge"

New York's Alexander Hamilton spoke contemptuously of the "imprudence of democracy," because "the people seldom judge or determine right."

Democracy had few champions, three or four at most. Old George Mason aristocratic Virginia liberal (who used to refer to George Washington in the old days as "that damned young surveyor"), observed philosophically that the upper classes had always been selfish and indifferent to human needs, and he warned against going to extremes. "We ought to attend," he said, "to the rights of every class of people."

Scottish born James Wilson a signer of the Declaration of Independence and an eminent jurist, argued strenuously for a broadening of the franchise and insisted that at least one branch of the legislature be elected by the people "No government," he reminded the delegates, "could long subsist without the confidence of the people."

James Madison talked in the same way "The great fabric to be raised," he said, "would be more stable and durable if it should rest on the solid foundation of the people themselves"

Finally there was Benjamin Franklin, who was not afraid of the people who believed in full democracy, in giving everybody the right to vote and elect the government. "It is of great

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the conservative interests. When Jefferson returned from France he had a visit with George Washington and asked him critically why he had favored the Senate in the convention. "Why," countered General Washington, "did you pour that coffee into your saucer?"

"To cool it," said Jefferson.

"Even so," replied Washington, "we pour legislation in the Senatorial saucer to cool it."

The Senate, in other words, was to serve as the balancing wheel in the governmental mechanism. Its members enjoying a six year term of office and not being subject to popular election, it was designed to be the stabilizing force in the new government. The makers of the Constitution, it is clear, took no undue chances. They were cautious about indulging in too much democracy, fearing that the common people, who were then mostly without education and even illiterate would not have sufficient wisdom and knowledge to govern themselves intelligently Nevertheless, in order to maintain a balance between conservatism and liberalism, the House of Representatives was made subject to popular and direct election by the people.

FRANKLIN'S CONCLUDING SPEECH

After the fundamental problems were finally settled, a committee "on stile," headed by Gouverneur Morris, drew up the completed document of the Constitution. On September 17, after sixteen weeks of continuous work, the convention met for the last time. The Constitution lay on the table for signature. There were several minutes of silence. Then Benjamin Franklin stood up, holding a paper, but his voice was too weak, and he handed it to James Wilson to read for him. Franklin's words best summarize the mood of that historic moment

Mr President, I confess that there are several parts of this Constitution which I do not at present approve, but I am not sure I shall never approve them For, having lived long, I have experienced many instances of being obliged, by better information or fuller consideration, to change opinions, even on important subjects, which I once thought right, but found to be otherwise. It is therefore that, the older I grow, the more apt I am to doubt my own judgment, and to pay more respect to the judgment of others. Most men, indeed, as well as most sects in religion, think themselves in possession of all truth, and that wherever

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Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on opinion—on the general opinion of the goodness of the government, as well as of the wisdom and integrity of its governors I hope, therefore, that for our own sakes, as a part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommend-
stitution (if appro-
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O
, sir, I cannot help expressing a wish that every member of the Convention, who may still have objections to it, would with me, on this occasion, doubt a little of his own infallibility, and, to make manifest our unanimity, put his name to this instrument.

While the members were signing Franklin, looking at the president's chair, on the back of which a sun was painted, said "I have, often and often, in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the president, without being able to tell whether it was rising or setting: but now, at length, I have the happiness to know that it is a rising, and not a setting sun"

2 Conflict over the Constitution and Some Opinions about It

CLASS DIVISIONS

As soon as the Constitution was submitted to the states for ratification, there broke out an intense and often bitter conflict over its adoption Article VII of the Constitution provided that nine out of the thirteen states would be needed to ratify it. For a while it looked as if this could not be achieved. A considerable portion of public opinion—especially in the big and populous states like New York and Virginia—seemed to be against the Constitution. Both the defenders and opponents of the Constitution girded for a tough fight.

The struggle produced at least two first rate publications in the field of political literature One, defending the Constitution, was *The Federalist*, a series of eighty five essays mostly

Much of the strength and efficiency of
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part of the people, and for the sake of posterity, we shall act heartily and unanimously in recommending this Constitution (if approved by Congress and confirmed by the conventions) wherever our influence may extend, and turn our future thoughts and endeavors to the means of having it well administered.

On the whole, sir, I cannot help expressing a wish that every member of the Convention, who may still have objections to it, would with me on this occasion, doubt a little of his own infallibility, and, to make manifest our unanimity, put his name to this instrument.

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others differ from them, it is so far error Steele,* a Protestant, in a dedication, tells the Pope, that the only differ-

[illegible]

though many private persons think almost as highly of their own infallibility as of that of their sect, few express it so naturally as a certain French lady, who, in a dispute with her sister, said, 'I don t know how it happens, sister, but I meet with nobody but myself that is always in the right—*il n y a que moi qui a toujours raison*'

In these sentiments, sir, I agree to this Constitution, with all its faults, if they are such, because I think a general government necessary for us, and there is no form of government, but what may be a blessing to the people if well administered, and believe further, that this is likely to be well administered for a course of years and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other I doubt, too, whether any other convention we can obtain may be able *to make a better constitution For, when you assemble a* number of men to have the advantage of their joint wisdom, you inevitably assemble with those men all their prejudices, their passions their errors of opinion their local interests, and their selfish views From such an assembly can a perfect production be expected? It therefore astonishes me, sir, to find this system approaching so near to perfection as it does and I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the builders of Babel, *and that our States are on the point of separation* only to meet hereafter for the purpose of cutting one another's throats Thus I consent, sir to this Constitution, because I expect no better, and because I am not sure that it is not the best. The opinions I have had of its errors I sacrifice to the public good I have never whispered a syllable of them abroad Within these walls they were born, and here they shall die If every one of us in returning to our constituents, were to report the objections he has had to it, and endeavor to gain partisans in support of them, we might prevent its being generally received and thereby lose all the salutary effects and great advantages resulting naturally in our favor among foreign nations as well as among ourselves, from our real or apparent unanimity

* Sir Richard Steele (1672 1729), the famous British essayist.

George Washington
Letter to Bushrod Washington, November 10, 1787

The warmest friends and the best supporters the Constitution has, do not contend that it is free from imperfections, but they found them unavoidable, and are sensible, if evil is likely to arise therefrom, the remedy must come hereafter; for in the present moment it is not to be obtained, and, as there is a constitutional door open for it, I think the people (for it is with them to judge), can, as they will have the advantage of experience on their side, decide with as much propriety on the alterations and amendments which are necessary, as ourselves I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us

The power under the Constitution will always be in the people. It is intrusted for certain defined purposes, and for a certain limited period, to representatives of their own choosing; and, whenever it is executed contrary to their interest, or not agreeable to their wishes, their servants can and undoubtedly will be recalled. It is agreed on all hands, that no government can be well administered without powers yet the instant these are delegated, although those, who are intrusted with the administration are no more than the creatures of the people, act as it were but for a day, and are amenable for every false step they take, they are, from the moment they receive it, set down as tyrants.

Dr Benjamin Rush
Letter to John Coakley Lettsom, September 28 1787

Our new federal government is very acceptable to a great majority of our citizens and will certainly be adopted immediately by *nine* and in the course of a year or 18 month [illegible]

[illegible]

of Europe have waded into order through seas of *blood*, you see we have traveled peaceably into order only through seas of *blunders*

written by Madison and Hamilton. The other, criticizing the Constitution as being undemocratic, was Richard Henry Lee's [illegible] addition, a middle-of-the-road group which found in the Constitution some good things and some bad ones. Members of this group objected mainly because the Constitution, while providing for every measure to safeguard property, contained no bill of rights for the protection of individual liberties.

ARGUMENTS OF THOSE WHO FAVORED THE CONSTITUTION

The most outspoken and searching opinions about the Constitution were e[illegible] —of the state r[illegible] of the conventic[illegible] Other opinions [illegible] viduals. The C[illegible] line (1) that it [illegible] world, (2) that if it had undesirable features, there were means of amending them, and (3) that, in the last analysis, it did provide for a government by the people.

Some of America's ablest men defended the Constitution.

The following are a few samples of letters and speeches of the Constitution's supporters.

George Washington
Letter to Colonel David Humphreys,
October 10, 1787

The Constitution that is submitted [to the states for ratification], is not free from imperfections, but there are as few radical defects in it as could well be expected, considering the heterogeneous mass of which the Convention was composed and the diversity of interests that are to be attended to. As a Constitutional door is opened for future amendments and alterations, I think it would be wise in the People to accept what is offered to them and I wish it may be by as great a majority of them as it was by that of the Convention . . . Much will depend however upon literary abilities, and the recommendation of it by good pens should be openly, I mean, publickly afforded in the Gazettes.

prevent their degenerating into savages or devouring each other like beasts of prey

A simple democracy has been very aptly compared by Mr Ames of Massachusetts to a volcano that contained within its bowels the fiery mater
A citizen of one
1776 refused in
of America" as a
simple democrac
experience of the American states ... its own government." The federation has in too many instances justified these two accounts of a simple popular government.

It would have been a truth, if Mr Locke had not said it, that where there is no law there can be no liberty; and nothing deserves the name of law but that which is certain and universal in its operation upon all the members of the community

To look up to a government that establishes justice, insures order, cherishes virtue, secures property, and protects from every species of violence, affords a pleasure that can only be exceeded by looking up, in all circumstances, to an overruling providence. Such a pleasure I hope is before us and our posterity under the influence of the new government.

The dimensions of the human mind are apt to be regulated by the extent and objects of the government under which it is formed. Think, then, my friend, of the expansion and dignity the American mind will acquire by having its powers transferred from the contracted objects of a state to the more unbounded objects of a national government!—A citizen and a legislator of the free and united states of America will be one of the first characters in the world

I would not have you suppose, after what I have written, that I believe the new government to be without faults. I can see them—yet not in any of the writings or speeches of the persons who are opposed to it. But who ever saw anything perfect come from the hands of man? It realizes notwithstanding, in a great degree, every wish I ever entertained in every state of the Revolution for the happiness of my country

Mr Smith In Massachusetts Constitutional Convention, January February, 1788

I am a plain man, and get my living by the plough I am
public, but I beg your leave to say

Dr. Benjamin Rush
Letter to David Ramsay, March or April, 1788

The objections which have been urged against the feder al Constitution, from its wanting a bill of rights, have been reasoned and ridiculed out of credit in every state that has adopted it There can be only two securities for liberty in any government, viz, representation and checks By the first the rights of the people, and by the second the rights of representation are effectually secured Every part of a free constitution hangs upon these two points, and these form the two capital features of the proposed Constitution of the United States Without them, a volume of rights would avail nothing and with them, a declaration of rights is absurd and unnecessary for the people, where their liberties are committed to an equal representation and to a compound legislature such as we observe in the new government, will always be the sovereigns of their rulers and hold all their rights in their own hands To hold them at the mercy of their servants is disgraceful to the dignity of freemen Men who call for a bill of rights have not recovered from the habits they acquired under the monarchical government of Great Britain

I have the same opinion with the Antifederalists of the danger of trusting arbitrary power to any single body of men, but no such power will be committed to our new rulers Neither the House of Representatives, the Senate, or the President can perform a single legislative act by themselves An hundred principles in man will lead them to watch, to check, and to oppose each other should an at tempt be made by either of them upon the liberties of the [illegible] e have [illegible] mbers [illegible] their constituents by voting agreeably to their inclinations than against them

But are we to consider men entrusted with power as the receptacles of all the depravity of human nature? By no means The people do not part with their full proportions of it. Reason and revelation both deceive us if they are all wise and virtuous Is not history as full of the vices of the people as it is of the crimes of the kings? What is the present moral character of the citizens of the United [illegible]

prevent their degenerating into savages or devouring each other like beasts of prey

A simple democracy has been very aptly compared by Mr Ames of Massachusetts to a volcano that contained within its bowels the fiery materials of its own destruction. A citizen of one of the cantons of Switzerland, in the year 1776 refused in my presence to drink "the commonwealth of America" as a toast, and gave as a reason for it "that a simple democracy was the devil's own government." The experience of the American states under the present con federation has in too many instances justified these two accounts of a simple popular government.

It would have been a truth, if Mr Locke had not said it, that where there is no law there can be no liberty and nothing deserves the name of law but that which is certain and universal in its operation upon all the members of the community

To look up to a government that establishes justice, in sures order cherishes virtue, secures property and protects from every species of violence, affords a pleasure that can only be exceeded by looking up in all circumstances, to an overruling providence Such a pleasure I hope is before us and our posterity under the influence of the new government.

The dimens ons of the human mind are apt to be regulated by the extent and objects of the government under which it is formed. Think, then, my friend, of the expansion and dignity the American mind will acquire by having its powers transferred from the contracted objects of a state to the more unbounded objects of a national government!— A c tizen and a legislator of the free and united states of America will be one of the first characters in the world.

I would not have you suppose, after what I have written, that I bel eve the new government to be without faults. I can see them—yet not in any of the writings or speeches of the persons who are opposed to it. But who ever saw anything perfect come from the hands of man? It realizes notwithstanding in a great degree, every wish I ever entertained in every state of the Revolution for the happiness of my country

Mr Smith in Massachusetts Constitutional Convention, January February 1788

I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say

undemocratic, (2) that it threatened the people's liberties by providing for a too-strong central government, and (3) that it was an instrument of the rich for the oppression of the poor

The following extracts, which have a special flavor, are from speeches against the adoption of the Constitution

Patrick Henry in Virginia Constitutional Convention, June 1788

I have the highest veneration for those gentlemen [who attended the Philadelphia Constitutional Convention], but, sir give me leave to demand, What right they had to say, *We the people*? Who authorized them to speak the language of *We the people* instead of *We the States*? The people gave them no power to use their name. I wish to hear the real actual, existing danger, which should lead us to take those steps, so dangerous in my conception. The federal Convention ought to have amended the old system, for this purpose they were solely delegated

The principles of this system [the Constitution] are extremely pernicious impolitic, and dangerous. It is not a democracy wherein the people retain all their rights securely The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change [of government] Is this tame relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans?

William Grayson in Virginia Constitutional Convention June 1788

Will this Constitution remedy the fatal inconveniences of the clashing state interests? Will the liberty and property of this country be secure under such a government? What, sir is the present Constitution? A republican government founded on the principles of monarchy with the three estates Is it like the model of Tacitus or Montesquieu? Are there checks in it, as in the British monarchy? There is an executive fetter in some parts, and as unlimited in others as a Roman dictator A democratic branch marked with the strong features of aristocracy and an aristocratic branch with all the impurities and imperfections of the British House of Commons arising from the

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a few words to my brother ploughjoggers in this house. . . .
I formed my own opinion, and was pleased with this Constitution My honorable old daddy there [pointing to Mr. Singletary] won't think that I expect to be a Congress-man, and swallow up the liberties of the people I never had any post, nor do I want one But I don't think the worse of the Constitution because lawyers, and men of learning, and moneyed men, are fond of it. I don't suspect they want to get into Congress and abuse their power. I am not of such a jealous make They that are honest men themselves are not apt to suspect other people . . . I think those gentlemen who are so very suspicious that as soon as a man gets into power he turns rogue, had better look at home.

Zachariah Johnson, in Virginia Constitutional Convention, June, 1788

It is my lot to be among the poor people The most that I can claim or flatter myself with, is to be of the middle rank. But I shall give my opinion unbiased and uninfluenced, without erudition or eloquence , and in so doing I will satisfy my conscience If this Constitution be bad, it will bear equally as hard on me as on any other member of the society It will bear hard on my children. . Having their felicity and happiness at heart, the vote I shall give in its favor can only be imputed to a conviction of its utility and propriety When I look for responsibility, I full find it in that paper [Constitution] When the members of the government depend on ourselves for their appointment, and will bear an equal share of the burdens imposed on the people , I conceive there can be no danger When one of them sees that Providence has given him a numerous family, he will be averse to lay taxes on his own posterity They will be as liable to be taxed as any other persons in the community Neither is he sure that he shall enjoy the place again if he breaks his faith When I take these things into consideration, I think there is a sufficient responsibility

ARGUMENTS AGAINST THE CONSTITUTION

Those who opposed the Constitution known as the Antifederalists, had some able spokesmen on their side, too Perhaps the most eloquent opponent was Patrick Henry in Virginia. The opposition argued (1) that the Constitution was

the principles and political faith of '76 [illegible]

[illegible] perty, and our consciences, are left wholly at the mercy [illegible] power, our lives, our of the legislature, and the powers of the judiciary may be extended to any degree short of [illegible]

Is this, sir [illegible] be duped ou[illegible] not yet arriv[illegible] that we are u[illegible] of governme[illegible]

We are told, sir, that a government is like a mad horse, which, notwithstanding all the curb you can put upon him, will sometimes run away with his rider The idea is undoubtedly a just one. Would he not, therefore, justly be deemed a mad man, and deserve to have his neck broken, who should trust himself on this horse without any bridle at all?

JEFFERSON'S CRITICISM OF THE CONSTITUTION

Jefferson was the most cogent spokesman of the middle group that is, those who thought the Constitution had good features but needed some fundamental amending

Thomas Jefferson to James Madison December 20, 1787

I like much the general idea of framing a government, which should go on of itself, peaceably, without needing continual recurrence to the State legislatures. I like the organization of the government into legislative, judiciary and executive I like the power given the legislature to levy taxes, and for that reason solely, I approve of the greater House being chosen by the people directly For though I think a House so chosen, will be very far inferior to the present Congress, will be very illy qualified to legislate for the Union, for foreign nations, etc., yet this evil does not weigh against the good, of preserving inviolate the fundamental principle, that the people are not to be taxed but by representatives chosen immediately by themselves I am captivated by the compromise of the opposite claims of the great and little States, of the latter to equal, and the former to proportional influence I am much pleased too, with the

when the spirit of
tion. Here
no security
is no bill
of rights, no proper restriction lives, our property, and our consciences, are left wholly at the mercy of the legislature, and the powers of the judiciary may be extended to any degree short of almighty. . . .

Is this, sir, a government for freemen? Are we thus to be duped out of our liberties? I hope, sir, our affairs have not yet arrived to that long-wished-for pitch of confusion, that we are under the necessity of accepting such a system of government as this. . . .

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And say finally whether peace is best preserved by giving energy to the government, or information to the people. This last is the most certain, and the most legitimate engine of government. Educate and inform the whole mass of the people. Enable them to see that it is their interest to preserve peace and order and they will preserve them. And it requires no very high degree of education to convince them of this. They are the only sure reliance for the preservation of our liberty After all, it is my principle that the will of the majority should prevail. If they approve the proposed constitution in all its parts, I shall concur in it cheerfully in hopes they will amend it, whenever they shall find it works wrong

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There was little debate in the smaller states Four of them—Delaware, New Jersey Georgia and Connecticut—promptly ratified the Constitution. Elsewhere, however the struggle continued to be intense and close.

In the end the supporters of the Constitution did carry the day but the margin of victory was slim. Massachusetts ratified by 187 against 168 In Virginia 89 delegates voted Yes and 79 No In New York the Constitution squeezed through by a mere 3 votes—30 to 27 But by June 21 1788 when New Hampshire ratified (57 to 47) the Constitution already had the required nine states and so it went into effect. In two states, North Carolina and Rhode Island, the opposition was so great that the Constitution was not ratified until the Federal Government was already ... ...sland ratified

substitution of the method of voting by person, instead of that of voting by States, and I like the negative given to the Executive, conjointly with a third of either House though I should have liked it better, had the judiciary been associated for that purpose, or invested separately with a similar power There are other good things of less moment

I will t [illegible] First the omission of a bill ([illegible] sophism, [illegible] protection against standing armies, restriction of [illegible] lies, the eternal and unremitting force for the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land, and not by the laws of nations To say, as Mr Wilson does, that a bill of rights was not necessary, because all is reserved in the case of the general government which is not given, while in the particular ones, all is given which is not reserved might do for the audience to which it was addressed but it is surely a *gratis dictum* the reverse of which might just as well be said, and it is opposed by strong inferences from the body of the instrument, as well as from the omission of the cause of our present Confederation which had made the reservation in express terms It was hard to conclude, because there has been a want of uniformity among the States as to the cases triable by jury because some have been so incautious as to dispense with this mode of trial in certain cases, therefore, the more prudent States shall be reduced to the same level of calamity It would have been much more just and wise to have concluded the other way that as most of the States had preserved with jealousy this sacred palladium of liberty, those who had wandered should be brought back to it and to have established general right rather than general wrong For I consider all the ill as established which may be established I have a right to nothing, which another has a right to take away and Congress will have a right to take away trials by jury in all civil cases Let me add, that a bill of rights is what the people are entitled to against every government on earth general or particular and what nc [illegible]

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[illegible]

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[illegible]

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The following are lists of delegates and signers

LIST OF DELEGATES
alphabetical

	Did he sign or not?
Baldwin Abraham	Yes
Bassett, Richard	Yes
Bedford Gunning Jr	Yes
Blair John	Yes
Blount, William	Yes
Brearly David	Yes
Broom, Jacob	Yes
Butler Pierce	Yes
Carroll, Daniel	Yes
Clymer George	Yes
Davie, William R.	No
Dayton, Jonathan	Yes
Dickinson, John	Yes
Ellsworth, Oliver	No
Few William	Yes
Fitzsimmons,* Thomas	Yes
Franklin, Benjamin	Yes
Gerry Elbridge	No
Gilman Nicholas	Yes
Gorham, Nathaniel	Yes
Hamilton, Alexander	Yes
Houston, William	No
Houston, William C.	No
Ingersoll, Jared	Yes
Jenifer Daniel of St. Thomas	Yes
Johnson, William Samuel	Yes
King Rufus	Yes
Langdon, John	Yes
Lansing John	No
Livingston, William	Yes
McClurg James	No
McHenry James	Yes
Madison, James Jr	Yes
Martin, Alexander	No
Martin Luther	No
Mason, George	No
Mercer John Francis	No
Mifflin Thomas	Yes
Morris Gouverneur	Yes

* Also spelled Fitzsimins.

7. *New Jersey*

David Brearly*
Jonathan Dayton*
William Churchill Houston
William Livingston*
William Paterson*

8. *New York*

Alexander Hamilton*
John Lansing
Robert Yates

9. *North Carolina*

William Blount*
William R. Davie
Alexander Martin
Richard Dobbs Spaight*
Hugh Williamson*

10. *Pennsylvania*

George Clymer*
Thomas Fitzsimmons*
Benjamin Franklin*
Jared Ingersoll*
Thomas Mifflin
Gouverneur Morris*
Robert Morris*
James Wilson*

11. *Rhode Island*

None

12. *South Carolina*

Pierce Butler*
Charles Pinckney*
Charles Cotesworth Pinckney*
John Rutledge*

13. *Virginia*

John Blair*
James McClurg
James Madison, Jr.*
George Mason
Edmund Randolph
George Washington*
George Wythe

*Those who signed the Constitution.

SIGNERS
(Alphabetical)

Last Name	*Given Name*	*State*	*Occupation*	*Dates*
1. Baldwin	Abraham	Ga.	Lawyer	1754-1807
2. Bassett	Richard	Del.	Lawyer	1745-1815
3. Bedford	Gunning	Del.	Lawyer	1747-1812
4. Blair	John	Va.	Lawyer	1732-1800
5. Blount	William	N. C.	Politician	1749-1800
6. Brearly	David	N. J.	Lawyer	1745-1790
7. Broom	Jacob	Del.	Politician	1752-1810
8. Butler	Pierce	S. C.	Planter	1744-1822
9. Carroll	Daniel	Md.	Politician	1730-1796
10. Clymer	George	Pa.	Merchant	1739-1813
11. Dayton	Jonathan	N. J.	Politician	1760-1824

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Thomas Mifflin
Gouverneur Morris *
Robert Morris *
James Wilson *

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A. MAJOR PIERCE'S CHARACTER SKETCHES

The following sketches of the delegates were written by Major William Pierce, who represented Georgia at the convention. Major Pierce thus described himself:

Pierce, William (ca. 1740-1789):

"My own character I shall not attempt to draw, but leave those who may choose to speculate on it, to consider it in any light that their fancy or imagination may depict. I am conscious of having discharged my duty as a Soldier through the course of the late revolution with honor and propriety, and my services in Congress and the Convention were bestowed with the best intention towards the interest of Georgia, and towards the general welfare of the Confederacy. I possess ambition, and it was that, and the flattering opinion which some of my Friends had of me, that gave me a seat in the wisest Council in the World, and furnished me with an opportunity of giving these short Sketches of the Characters who composed it."

Baldwin, Abraham (1754-1870):

"Mr Baldwin is a Gentleman of superior abilities, and joins in a public debate with great art and eloquence. Having laid the fo[illegible]

[illegible] of Men and to understand them. He [illegible]
torney in [illegible]
Mr Bald[illegible]
thirty-thre[illegible]

Bassett, Richard (1745 1815):

thinking there is something regular deep and comprehensive yet the oddity of his address the vulgarisms that accompany his publ c speaking and that strange New England cant which runs through his public as well as his private speaking make everything that is connected with him grotesque and laughable —and yet he deserves infinite praise—no Man has a better Heart or a clearer Head. If he cannot embellish he can furnish thoughts that are wise and useful. He is an able politician, and extremely artful in accomplishing any particular object —it is remarked that he seldom fails I am told he sits on the Bench in Connecticut, and is very correct in the discharge of his Judicial functions In the early part of his life he was a Shoe maker—but despising the lowness of his condition, he turned Almanack maker and so progressed upwards to a Judge He has been several years a Member of Congress and discharged the duties of Office with honor and cred t to himself and advantage to the State he represented. He is about 60" (Actually he was sixty-six.)

Spaight Richard Dobbs (1758 1802)

"Mr Spa ght is a worthy Man, of some abilities and fortune Without possessing a Genius to render him brilliant, he is able to discharge any public trust that his Country may repose in him. He is about 31 years of age" (Actually he was twenty nine, and hence the second youngest member of the convention.)

Strong Caleb (1745 1819)

"Mr Strong is a lawyer of some eminence,—he has received a liberal education, and has good connections to recommend him. As a Speaker he is feeble, and without confidence. This Gentn. is about 35 years of age [actually he was forty two], and greatly in the esteem of his Colleagues."

Washington George (1732 1799)

"Genl Washington is well known as the Commander in chief of the late American Army Having conducted these states to independence and peace he now appears to assist in framing a Government to make the People happy Like Gustavus Vasa, he may be said to be the deliverer of his Country—like Peter the Great he appears as the politician and the States-man and like Cincinnatus he returned to his farm perfectly contented with being only a plain Citizen,

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Yates Robert (1724-1796)

"Mr Yates is sa d to be an able Judge He is a Man of great legal abilities but not distinguished as an Orator Some of his Enemies say he is an anti federal Man, but I discovered no such dispos tion in him. He is about 45 years old [actually he was sixty-three] and enjoys a great share of health"

B FRENCH CHARACTER SKETCHES *

The following sketches are from the report of the French Minister Otto to Foreign Minister Montmorin in Paris They were written in 1788

Baldwin Abraham.

"Reasonable and well intentioned, but never had the occas on to distinguish himself The Congress will enable him to do so by appointing him one of the Commissioners to settle its debts to the States."

Dayton Jonathan

"Little known, having no other merit than that of being he son of a good patriot and the benefactor of M d Ante oches from which one may presume that he likes the French."

Dickinson John

"Author of the Letters of a Pennsylvania Farmer very rich had been anti English at the beginning of the Revolu tion without however favoring independence having actually voted against it publicly He is old, feeble and without influ ence"

Ellsworth Ol ver

"Mr Ellsworth former member of Congress is absolutely of the same outlook and disposition [as Benjamin Huntington a friend of France] The same may be said of Mr [Roger] Sherman. In general the men of that State [Connecticut] have

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vantage of having represented his State [New Hampshire] at the great Convention in Philadelphia and of having signed the new Constitution. . . ."

Hamilton, Alexander

"Great orator, intrepid in public debate. Zealous and even extremist partisan of the new Constitution and a declared enemy of Gov Clinton He is one of these rare men who has distinguished himself equally on the field of battle and at the bar He owes everything to his talents . . . He has a bit too much affectation and too little prudence . . He is too impetuous and owing to a desire to lead everything, he fails of his goal. His eloquence is often out of place in public debates, where precision and clarity are preferred to brilliant imagination It is believed that Mr H. is the author of the pamphlet entitled *The Federalist* Here again he has failed of his goal That work is of no use to the educated, and it is too learned and too long for the ignorant. Nevertheless, it has given him great fame, and has led to the giving of the name *Hamilton* to a small frigate which was carried through the streets of New York during the great Federal procession. A stranger in this State where he was educated through charity, Mr Hamilton has found the means of carrying off the daughter of General Schuyler, a great landowner and very influential."

Langdon John.

"One of the most interesting and amiable men in the United States former governor of New Hampshire, and head of a powerful party which is in opposition to General Sullivan. Mr L. has made a great fortune in commerce, he is the Rob Morris of his State, spending generously and attracting many citizens through his liberality He was one of the principal members of the Philadelphia Convention, but he stayed there only a few days, and though his colleagues had offered him the presidency he did not wish to remain there, because he had in mind the Governorship of New Hampshire and because his business did not permit him a long absence He is sincerely attached to France and even in favor of our institutions and manners In order to spread the taste for our furniture, he has imported some of the best from Paris. It is said that he is jealous of his wife, something quite rare in America Many French officers have found to their chagrin that this jealousy was entirely unfounded."

versation, having made a special study of finances He works constantly with Mr Rob Morris He is more feared than admired, but few people esteem him"

Morris, Robert

"Superintendent of Finances during the war, the most powerful merchant in his State. A good head above all, and experienced, but not studious He has grown a bit cold towards France. Still it will be easy to win him back through proper handling This is a man of the greatest weight, to whose friendship we cannot be indifferent."

Randolph, Edmund

"Present Governor [of Virginia], one of the most distinguished men in America by his talents and influence; nevertheless, he has lost a bit of his standing through his too-violent opposition to the ratification of the new Constitution.
We may consider him as being very indifferent to France"

Rutledge John

"Governor [of South Carolina] during the war, member of Congress and of the [Philadelphia] Convention, as well as of other great conferences The most eloquent, but also the proudest and most imperious man in the United States He uses his great influence and his knowledge as a lawyer for not paying his debts which greatly exceed his fortune His son is traveling in France for his education

Williamson Hugh

"Physician and former professor of astronomy Excessively bizarre loving to hold forth, but speaking with spirit. It is difficult to know his character well, it is even possible that he does not have any; but his activity has given him much influence in Congress for some time."

Wilson, James

"Distinguished jurist. It was he who was designated by Mr Gerard to be the lawyer of the French nation a place which has since been recognized as useless A haughty man, an intrepid aristocrat, active, eloquent, profound, a dissem-

Livingston, William:

"William Livingston, Esq , Governor [of New Jersey] since the beginning of the Revolution, very well informed, firm, patriotic, preferring the public welfare to popularity and having often endangered his position by opposing bad laws in the legislature Although he does not cease to criticize the people, he is always re-elected, since even his enemies agree that he is one of the cleverest and most virtuous men on the continent "

Madison, James

"Well-informed, wise, moderate, docile, studious, perhaps more profound than Mr Hamilton, but less brilliant, intimate [illegible] attached to France He [illegible] ernor of his State, if his modesty would permit him to accept that place Last time he refused to accept the presidency of the Congress He is a man who should be studied a long time in order to form a just opinion of him."

Martin, Luther

"A distinguished lawyer who has written much against the resolutions of the Philadelphia Convention, of which he was a member "

Mifflin, Thomas

"Former General, president of the Congress, orator, etc. A declared and proven friend of France Very popular and leading with astonishing facility that monster of a hundred heads called the people A good lawyer a good officer, a good patriot, and an agreeable society man He does well everything he undertakes

Morris, Gouverneur

"Citizen of the State of New York, but always in contact with Rob Morris and having represented Pennsylvania several times Celebrated lawyer one of the best organized heads on the continent, but without manners and, if his enemies are to be believed, without principles, infinitely interesting in con-

versation, having made a special study of finances He works constantly with Mr Rob Morris He is more feared than admired, but few people esteem him "

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The Constitution is now, like Magna Carta and the Bill of Rights, only the sap-centre of a system of government vastly larger than the stock from which it has branched—a system some of whose forms have only very indistinct and rudimental beginnings in the simple substance of the Constitution and which exercises many functions apparently quite foreign to the primitive properties contained in the fundamental law

The Constitution itself is not a complete system, it takes none but the first steps in organization. It does little more than lay a foundation of principles. It provides with all possible brevity for the establishment of a government having in several distinct branches, executive, legislative, and judicial powers. It vests executive power in a single chief magistrate, for whose election and inauguration it makes carefully definite provision, and whose privileges and prerogatives it defines with succinct clearness, it grants specifically enumerated powers of legislation to a representative Congress, outlining the organization of the two houses of that body , and it establishes a Supreme Court with ample authority Here the Constitution's work of organization ends, and the fact that it attempts nothing more is its chief strength. For it to go beyond elementary provisions would be to lose elasticity and adaptability The growth of the nation and the consequent development of the governmental system would snap asunder a constitution which could not adapt itself to the measure of the new conditions of an advancing society If it could not stretch itself to the measure of the times, it must be thrown off and left behind, as a by gone device, and there can, therefore, be no question that our Constitution has proved lasting because of its simplicity It is a corner-stone, not a complete building or rather, to return to the old figure, it is a root, not a perfect vine.

Lord Bryce's comment on the Constitution

In his book *The American Commonwealth* (1888), Bryce, one of the keenest British observers of American life, wrote of the Constitution

> The Constitution of 1789 deserves the veneration with which the Americans have been accustomed to regard it. It is true that many criticisms have been passed upon its arrangement, upon its omissions, upon the artificial character of some of the institutions it creates. . . Yet, after

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superbly enduring political mechanism the modern world has produced."—Franklin D. Roosevelt, 1933

"The Constitution . . . is what living men and women think it is."—Charles A. Beard, 1936

6 Chronological Table

1786 September 11 Conference at Annapolis recommended a Constitutional Convention

1787 February 21 Congress resolved in favor of a Constitutional Convention

May 14 Convention met at Philadelphia

September 17 Constitution completed and signed

September 19 Constitution printed in Philadelphia newspapers

December 7 Delaware ratified Constitution

December 12 Pennsylvania ratified Constitution

December 18 New Jersey ratified Constitution

1788 January 2 Georgia ratified Constitution

January 4 Connecticut ratified Constitution

February 6 Massachusetts ratified Constitution

April 28 Maryland ratified Constitution

May 23 South Carolina ratified Constitution

June 21 New Hampshire ratified Constitution

June 25 Virginia ratified Constitution

July 26 New York ratified Constitution

PART II

Text Of The Constitution

THE CONSTITUTION OF THE UNITED STATES

ARTICLE I

Sec. 1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives

Sec 2 The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall

sons,[1] including those bound to service for a term of years,

United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The

[1] *"which shall be determined . . free persons"*—modified by the Fourteenth Amendment.

[2] *"three-fifths . persons"*—superseded by the Fourteenth Amendment.

members present

tions, for senators and representatives, shall be prescribed in each state by the legislature thereof But the Congress may at any time by law make or alter such regulations,

authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide

Each house may determine the rules of

nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal

Neither house during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting

Sec 6 The senators and representatives shall receive a compensation for

...tieth Amendment ... a different day —superseded by the Twen-

or affirmation When the president of the United States is tried the chief justice shall preside And no person shall be convicted without the concurrence of two-thirds of the members present

Judgment in c
ther than t
hold and en ul, trust or profit under the United States, but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law

Sec. 4 The times, places and manner of holding elections, for senators and representatives, shall be prescribed in each state by the legislature thereof But the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day [5]

Sec 5 Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide

Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy, and the yeas and nays of the members of either house on any question, shall, at the desire of one-fifth of those present, be entered on the journal

Neither house during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting

Sec 6 The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States They shall in all cases except treason, felony and breach of the

[5] *The Congress* ... *a different day* —superseded by the Twentieth Amendment

Sec 8 The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States

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To establish post offices and post-roads

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to th

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maintain a navy

To make rules for the government and regulation of the land and naval forces

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions

To provide for organizing, arming and d

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Sec 8 The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States, but all duties, imposts and

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To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries·

To constitute tribunals inferior to the supreme court·

To define and punish piracies and felonies committed *on the high seas and offences against the law of nations*.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water

To raise and support

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To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions

To provide for organizing, arming and

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the seat of the government of the United

ke authority over all places pur-

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what [illegible]

subject to the revision and control of the Congress [illegible]

admit of delay.

ARTICLE II

Sec 1 The executive power shall be vested in a president of the United States of America He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows

Each state shall appoint [illegible]

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts, laid by

peace, *enter into any agreement or compact with another* state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay

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of the ...

... of the Senate, ... by and with the advice and consent senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law But the Congress may by law vest the appointment of such inferior officers, as they think proper in the president alone, in the courts of law, or in the heads of departments

The president shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions which shall expire at the end of their next session

Sec. 3 He shall, from time to time give to the Congress information of the state of the union, and recommend to their consideration, such measures as he shall judge necessary and expedient he may on extraordinary occasions convene both houses or either of them and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper he shall receive ambassadors and other public ministers he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States

Sec 4 The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for and conviction of, treason, bribery, or other high crimes and misdemeanors

ARTICLE III

Sec. 1 The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as

the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States, he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law But the Congress may by law vest the appointment of such inferior officers, as they think proper in the president alone, in the courts of law, or in the heads of departments

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ARTICLE IV.

Sec. 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.*

Sec. 3. New states may be admitted by the Congress into this union, but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Sec. 4. The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this consti-

* "*No person . . . may be due*"—superseded by the Thirteenth Amendment in regard to slaves.

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[illegible]

ARTICLE V

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this consti-

*"*No person* ... *may be due*"—superseded by the Thirteenth Amendment in regard to slaves.

United States of America the 12th In witness whereof we have hereunto subscribed our names

GEORGE WASHINGTON, *President,*
And Deputy from Virginia

New Hampshire,	John Langdon, Nicholas Gilman.
Massachusetts,	Nathaniel Gorham, Rufus King
Connecticut,	William Samuel Johnson, Roger Sherman
New-York,	Alexander Hamilton
New Jersey,	William Livingston, David Brearly, William Paterson, Jonathan Dayton
Pennsylvania,	Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzsimons, Jared Ingersoll, James Wilson, Gouverneur Morris
Delaware	George Read, Gunning Bedford, jun., John Dickinson, Richard Bassett, Jacob Broom
Maryland,	James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carroll
Virginia,	John Blair, James Madison, jun.

firmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the ght to a speedy and public trial, by an impartial jury of e state and district wherein the crime shall have been ommitted, which district shall have been previously ascer-ined by law and to be informed of the nature and cause f the accusation, to be confronted with the witnesses gainst him to have compulsory process for obtaining vitnesses in his favor, and to have the assistance of counse for his defence

ARTICLE VII

In suits o
shall excee
be preserve
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ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted

ARTICLE IX.

The enumeration in the constitution of certain rights

irmation, and particularly describing the place to be earched and the persons or things to be seized

ARTICLE V

No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation

ARTICLE VI

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defence

ARTICLE VII

In suits at common law, where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law

ARTICLE VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted

ARTICLE IX.

The enumeration in the constitution of certain rights

taken by states, the representation from each state having one vote, a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice And if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president. The person having the greatest number of votes as vice-president shall be the vice president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the vice-president, a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.
[Declared in force, September 25, 1804]

ARTICLE XIII

Sec 1 Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction
Sec 2 Congress shall have power to enforce this article by appropriate legislation
[Declared in force December 18, 1865]

ARTICLE XIV

Sec. 1 All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law
Sec 2 Representatives shall be apportioned among the several S[tates] according to their respective numbers,

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Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

[*Declared in force, March 30, 1870*]

ARTICLE XVI.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

[*Declared in force, February 25, 1913*]

ARTICLE XVII.

The Senate of the United States shall be composed of two senators from each state, elected by the people thereof for six years, and each senator shall have one vote The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures

When vacancies happen in the representation of any state in the senate the executive authority of such state shall issue writs of election to fill such vacancies, provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

[*Declared in force May 31 1913*]

ARTICLE XVIII

Sec 1 After one year from the ratification of this article the manufacture sale or transportation of intoxicating liquors within, the importation thereof into, or exportation thereof from the United States and all territory subject to the jurisdiction thereof, for beverage purposes is hereby prohibited

Sec 2 The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation

Sec 3 This article shall be inoperati[illegible] have been ratified as an amendment to

. . enforce th e

ARTICLE XVI.

. . shall have power to lay and collect taxes

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he case of the death of any of the persons from whom the Senate may choose a Vice-President, whenever the right of choice shall have devolved upon them.

Sec. 5 Sections 1 and 2 shall take effect on the
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within seve... years from the date of its submission.

[*Declared in force, February 6, 1933.*]

ARTICLE XXI

Sec 1 The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec 2 The transportation or importation into any state, territory or posses
livery or us
the laws the
Sec. 3
have been
by convent ... states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

[*Declared in force, December 5, 1933*]

ARTICLE XXII

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once But this Article shall not appl
ing the office of Pr
by the Congress, ar
be holding the offi
during the term w
tive from holding
President during t ... mainder of such term.

[*Declared in force February 26, 1951*]

the legislatures of the several states, as provided in the Constitution, within seven years from the date of submission hereof to the states by the Congress

[*Declared in force January 29 1919 repealed by Twenty-first Amendment*]

ARTICLE XIX

The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex

Congress shall have power to enforce this article by appropriate legislation

[*Declared in force August 26 1920*]

ARTICLE XX

Sec 1 The terms of the President and Vice President shall end at noon on the 20th day of January and the terms of senators and representatives at noon on the 3rd day of January of the years in which such terms would have ended if this article had not been ratified and the terms of their successors shall then begin

Sec 2 The Congress shall assemble at least once in every year and such meeting shall begin at noon on the 3rd day of January unless they shall by law appoint a dif-

the case of the death of any of the persons from whom the Senate may choose a Vice-President, whenever the right of choice shall have devolved upon them

Sec 5 Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

[*Declared in force, February 6, 1933.*]

ARTICLE XXI

Sec. 1 The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any state, territory, or possession of the United States, for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited

Sec. 3 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

[*Declared in force, December 5, 1933*]

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No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term

[*Declared in force, February 26, 1951*]

PART III

Some Supreme Court Decisions Affecting The Constitution

CHISHOLM VS GEORGIA, 1793

The decision in this case interpreted the Constitution such a way as to give a citizen a right to sue a state Ti caused so much protest that it was later reversed by t Eleventh Amendment

Background *Chisholm and a group of other South Car linians sued Georgia for property confiscated during the Rev lution The question was Could a citizen sue a state in Federal court? The Supreme Court following Article I, Sec 2 of the Constitution ruled that a citizen did have su a right The state of Georgia however not only refused appear in court but denying the legality of the decisio threatened to punish any official who would attempt to execu the judgment of the court*

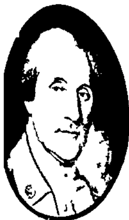
This is a case of uncommon magnitude One of tl parties to it is a State certainly respectable, claiming to l sovereign The question to be determined is, whether th State, so respectable and whose claim soars so high, amenable to the jurisdiction of the Supreme Court of th United States? This question important in itself, will de pend on others more important still and may perhaps, b ultimately resolved into one no less radical than this— "Do the People of the United States form a nation?" .

To the Constitution of the United States the term sover eign is totally unknown There is but one place where i could have been used with propriety But even in that plac it would not, perhaps have comported with the delicac of those who ordained and established that Constitution They might have announced themselves sovereign peopl of the United States but serenely conscious of the fact they avoided the ostentatious declaration

I am thirdly and chiefly to examine the importan question now before us by the Constitution of the Unitec States, and the legitimate result of that valuable instrument. Under this view, the question is naturally subdivided into two others 1 Could the Constitution of the United States vest a jurisdiction over the State of Georgia? 2 Has the Constitution vested such jurisdiction in this Court? I have already remarked that in the practice and even in the science of politics there has been frequently a strong current against the natural order of things and an inconsiderate or an interested disposition to sacrifice the end to the means This remark deserves a more pa ular illustra

Portraits of the Signers

On this and the follow ng pages are portra ts of all of the s gners of the Cons tution w th the except on of Thomas Fitzs mmons



GEORGE WASH NGTON
1732 1799
Virg n a



JOHN LANGDON
1739 1819
New Hampshire



NICHOLAS G LMAN
1762 1814
New Hampshire



NATHANIEL GORHAM
1738-1796
Massachusetts

Even in almost every nation, which has been denominated free, the state has assumed a supercilious preeminence above the people, who have formed it Hence the haughty notions of state independence, state sovereignty, and state supremacy .

In the United States and in the several States which compose the Union, we go not so far but still we go one step farther than we ought to go in this unnatural and inverted order of things The states rather than the People for whose sakes the states exist, are frequently the objects which attract and arrest our principal attention This, I believe, has produced much of the confusion and perplexity, which have appeared in several proceedings and several publications on state politics, and on the politics, too, of the United States Sentiments and expressions of this inaccurate kind prevail in our common, even in our convivial, language. A State, I cheerfully admit, is the noblest work of Man But, Man, himself, free and honest, is, I speak as to this world, the noblest work of God.

With the strictest propriety, therefore, classical and political, our national scene opens with the most magnificent object which the nation could present "The People of the United States" are the first personages introduced Who were these people? They were the citizens of thirteen States [illegible]

[illegible]

requisition on the several States terminated its legislative authority, executive or judicial authority it had none In [illegible]

[illegible]

[illegible] judicial power is vested.

[illegible]

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pr [illegible] have founded myself are just and true this question must unavoidably receive an affirmative answer If those States were the work of those people, those people and that I may apply the case closely the people



CHARLES PINCKNEY
1758 1824
South Carol na



PIERCE BUTLER
1744 1822
South Carol na



WILLIAM FEW
1748 1828
Georg a



ABRAHAM BALDWIN
1754 1807
Georg a

Acknowledgments

Portra t of David Brearly photo by courtesy of the New York Public Library portra t of Jacob Broom photo by courtesy of B own B os por trait of James Mad son photo by courtesy of the author all others by courtesy of the Library of Congress

Even in almost every nation, which has been denominated free, the state has assumed a supercilious preeminence above the people, who have formed it. Hence the haughty notions of state independence, state sovereignty, and state supremacy . . .

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With the strictest propriety, therefore, classical and political, our national scene opens with the most magnificent object which the nation could present. "The People of the United States" are the first personages introduced. Who were these people? They were the citizens of thirteen States, each of which had a separate constitution and government, and all of which were connected together by articles of confederation. To the purposes of public strength and felicity, that confederacy was totally inadequate. A requisition on the several States terminated its legislative authority; executive or judicial authority it had none. In order, therefore, to form a more perfect union, to establish justice, to insure domestic tranquillity, to provide for the common defense, and to secure the blessings of liberty, those people, among whom were the people of Georgia ordained and established the present Constitution. By that Constitution legislative power is vested, executive power is vested, judicial power is vested.

The question now opens fairly to our view, could the people of those States, among whom were those of Georgia, bind those States and Georgia among the others, by the legislative, executive, and judicial power so vested? If the principles on which I have founded myself are just and true, this question must unavoidably receive an affirmative answer. If those States were the work of those people, those people, and, that I may apply the case closely, the people

MARBURY VS. MADISON, 1803

The importance of this case lies in the fact that it was the first one in which the Supreme Court ruled that a law of Congress was void This established a precedent which has been followed ever since

de [illegible]
the [illegible]
Se [illegible]
mission to Marbury The latter then sued for a writ of mandamus requiring Madison to give him his commission In his decision Chief Justice Marshall made two points One was that the President had no right to deny Marbury his commission the second was that the Judiciary Act of 1789, which gave the Supreme Court the power to issue writs of mandamus was contrary to the Constitution Thus the Supreme Court took upon itself the historic power of declaring acts of Congress unconstitutional and therefore, void

The question whether an Act repugnant to the Constitution can become the law of the land, is a question deeply interesting to the United States, but, happily, not of an intricacy proportioned to its interest. It seems only necessary to recognize certain principles, supposed to have been long and well [illegible]

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to be tr [illegible]

The [illegible] of the United States is of the latter description The powers of the legislature are defined and limited, and that those limits may not be mistaken, or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed

of these conflicting rules governs the case This is of the very essence of judicial duty If, then, the courts are to regard the Constitution, and the Constitution is superior to any ordinary Act of the Legislature, the Constitution, and not such ordinary Act, must govern the case to which they both apply

Those, then, who controvert the principle that the Constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the Constitution and

... ce, completely obligatory

It would declare that if the legislature

... impotence, with the same ... which professes to restrict their powers within narrow limits It is prescribing limits, and declaring that those limits may be passed at pleasure

... much reverence, for rejecting the construction. But the peculiar expressions of the Constitution of the United States furnish additional arguments in favor of its rejection. The judicial power of the United States is extended to all cases arising under the Constitution. Could it be the intention of those who gave this power, to say that in using it the Constitution should not be looked into? That a case arising under the Constitution should be decided without examining the instrument under which it arises? This is too extravagant to be maintained In some cases, then, the Constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read or to obey?

There are many other parts of the Constitution which serve to illustrate this subject. It is declared that "no tax or duty shall be laid on articles exported from any State" Suppose a duty on the export of

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... only see the law? The Constitution declares "that no bill of attainder or ex post facto

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DARTMOUTH COLLEGE [illegible]

This case is important [illegible] which the United States Supreme Court [illegible] stitution to apply to a [illegible] a contract. This meant that [illegible] tracts, could not be [illegible] decision, written by Chief [illegible] on American economic [illegible] that it encouraged and [illegible] legislation.

Background. In 1769 King George III [illegible] establishing Dartmouth College [illegible] state of New Hampshire [illegible] the new one set up another [illegible] protested that this was [illegible] the previous charter which was [illegible] Supreme Court in this [illegible] board.

nant to the Constitution, is void, and that courts, as well as other departments, are bound by that instrument.

DARTMOUTH COLLEGE VS. WOODWARD, 1819

This case is important because it was one of the earliest in which the United States Supreme Court interpreted the Constitution to apply to a corporation charter which it considered a contract This meant that henceforth charters being contracts could not be impaired by any legislative enactment The decision written by Chief Justice Marshall, had an influence on American economic and business history in the sense that it encouraged and protected corporate business against legislation

Background *In 1769 King George III granted a charter establishing Dartmouth College in that year In 1816 the state of New Hampshire changed the royal charter and, under the new one set up another board of trustees The old board protested that this was unconstitutional because it violated the previous charter which was it argued, a contract The Supreme Court in this historic case agreed with the old board*

It can require no argument to prove that the circum

[illegible]

1 On the first point it has been argued that the word "contract in its broadest sense, would comprehend the political relations between the government and its citizens, would extend to offices held within a state for state pur

[illegible]

to preserve good government, the public judgment must control. That even marriage is a contract, and its obligations are affected by the laws respecting di vorces. That the clause in the constitution, if construed in

If the act of incorporation be a grant of political power, if it create a civil institution to be employed in the adminis-

States.

But if this be a *private eleemosynary institution*, endowed with a capacity to take property for objects *unconnected with government*, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves, there may be more difficulty in the case, although neither the persons who have made these stipulations, nor those for whose benefit they were made, should be parties to the cause. Those who are no longer interested in the property may yet retain such an interest in the preservation of their

by a violation of the compact, the trustees be not so completely their representatives in the eye of the law as to stand in their place, not only as respects the government of the college, but also as respects the maintenance of the college charter It becomes then the duty of the court most seriously to examine this charter, and to ascertain its true character

possesses only those properties which

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those funds in the manner prescribed by themselves; there may be more difficulty in the case, although neither the persons who have made these stipulations, nor those for whose benefit they were made, should be parties to the cause. Those who are no longer interested in the property may yet retain such an interest in the preservation of their own arrangements as to have a right to insist that those arrangements shall be held sacred. Or, if they have themselves disappeared, it becomes a subject of serious and anxious inquiry whether those whom they have legally em- [illegible]

Whence, then can be derived the idea that Dartmouth College has become a public institution, and its trustees public officers. Not from the source whence its funds were drawn, *for its* foundation is purely private and eleemosynary—*not from* the application of those funds, for money may be given for education and the persons receiving it do not, by being *employed* in the education of youth, become members of the civil government. Is it from the act of incorporation? Let this subject be considered.

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which

inviolability? Circumstances have not changed it. In reason, in justice, and in law, it is now what it was in 1769.

This is plainly a contract to which the donors, the trustees, and the crown (to whose rights and obligations New Hampshire succeeds) were the original parties. It is a

taking this case out of the prohibition contained in the constitution.

It is more than possible that the preservation of rights of this description was not particularly in the view of the framers of the constitution when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the state legislatures. But although a particular and a rare case may not in itself be of sufficient magnitude to induce a rule, yet it must be gov-

On what safe and intelligible ground can this exception stand? There is no expression in the constitution, no sentiment delivered by its contemporaneous expounders, which would justify us in making it. . . .

Almost all eleemosynary corporations, those which are created for the promotion of religion, of charity, or of edu-

... to convert a literary insti-

machine entirely subservient to the will of government. This may be for the advantage of this college in particular, and may be for the advantage of literature in general, but it is not according to the will of the donors, and is subversive of that contract on the faith of which their property was given.

... that the acts of the legisla-

verdict ought to have been for the plaintiffs The judgment of the state court must, therefore, be reversed.

Mr Justice Washington and Mr Justice Story rendered separate concurring opinions Mr Justice Duvall dissented.

McCulloch vs Maryland, 1819

This decision, one of Chief Justice Marshall's most notable ones interpreted the Constitution in such a way as to enlarge the powers of the Federal Government It is, therefore, important in the growth and development of the central power in Washington

Background *In 1818 Maryland taxed ...*

... constitutional and void

The first question made in this cause is, has Congress power to incorporate a bank?

It has been truly said that this can scarcely be considered as an open question, entirely unprejudiced by the former proceedings of the nation respecting it. The principle now contested was introduced at a very early period of our history has been recognized by many successive legislatures, and has been acted upon by the judicial department, in cases of peculiar delicacy, as a law of undoubted obligation

... issing this question, the counsel for the State of

reorganized in such a manner as to convert a literary institution, molded according to the will of its founders and placed under the control of private literary men, into a machine entirely subservient to the will of government. This may be for the advantage of this college in particular, and may be for the advantage of literature in general, but it is not according to the will of the donors, and is subversive of that contract on the faith of which their property was given.

It results from this opinion, that the acts of the legislature of New Hampshire, which are stated in the special verdict found in this cause, are repugnant to the constitution of the United States, and that the judgment on this special verdict ought to have been for the plaintiffs The judgment of the state court must, therefore, be reversed

Mr Justice Washington and Mr Justice Story rendered separate concurring opinions Mr Justice Duvall dissented.

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In discussing this question, the counsel for the State of

. . . somewhat sally

heir benefit.

This government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it, would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found is necessary to urge That principle is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise as long as our system shall exist. In discussing these questions, the conflicting powers of the State and general governments must be brought into view and the supremacy of their respective laws, when they are in opposition, must be settled.

If any one proposition could command the universal

Among the enumerated powers we do not find . . .
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nd minutely described Even the 10th amendment, which

be the influence of this fact on the case), is emphatically and truly a government of the people. In form and in substance it emanates from them, its powers are granted by them, and are to be exercised directly on them, and for their benefit.

This government is acknowledged by all to be one of [illegible]

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If any one proposition could command the universal assent of mankind, we might expect it would be this that the government of the Union, though limited in its powers, is supreme within its sphere of action. This would seem to [illegible]

act must necessarily bind its component parts. But this question is not left to mere reason the people have, in express terms, decided it, by saying, "this constitution, and the laws of the United States, which shall be made in pursuance thereof," "shall be the supreme law of the land" and by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States shall take the oath of fidelity to it.

The government of the United States then, though lim- [illegible]

which requires that everything granted [illegible] powers, and and minutely described. Even the 10th amendment, which

it is the interest of the nation to facilitate its execution. It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Throughout this vast republic, from the St. Croix to the Gulph of Mexico, from the Atlantic to the Pacific, revenue is to be collected and expended, arm [illegible]

[illegible]

[illegible] that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the *public good, the* intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey, but that instrument does not profess to enumerate the means by which the powers it confers may be executed, nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers. It is then, the subject of fair inquiry, how far such means may be employed.

It is not denied that the powers given to the [illegible]

[illegible] the nation may require, and of employing the usual means of conveyance. But it is denied that the government *has its* choice of means, or *that it may* employ the most convenient means, if to employ them it be necessary to erect a corporation. . . .

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...d to the west,
...l. Is that con-
struction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey, but that instrument does not profess to enumerate the means by which the powers it confers may be executed, nor does it prohibit the creation of a corporation if the existence of such a being be essential to the beneficial exercise of those powers It is, then, the subject of fair inquiry, how far such means may be employed.

It is not denied that the powers given to the government imply the ordinary means of execution. That, for example, of raising revenue and applying it to national purposes, is admitted to imply the power of conveying money from place to place, as the exigencies of the nation may require, and of employing the usual means of conveyance But it is denied that the government has its choice of means, or that it may employ the most convenient means, if to employ them it be necessary to erect a corporation. . .

The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason be allowed to select the means and those who contend that it may not select any appropriate means that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception

The creation of a corporation it is said, appertains to

it is the interest of the nation to facilitate its execution It can never be their interest, and cannot be presumed to have been their intention, to clog and embarrass its execution by withholding the most appropriate means. Through-

[illegible]

or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous, and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good the intention of impeding their exercise by withholding a choice of means? If, indeed, such be the mandate of the constitution, we have only to obey; but that instrument does not profess to enumerate the means by which the powers it confers may be executed, nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers It is, then the subject of fair inquiry, how far such means may be employed

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[illegible]

... that exception

The creation of a corporation, it is said ...

general reasoning. To its enumeration of powers is added that of making "all laws which shall be necessary and proper for carrying into execution the foregoing powers, and [illegible]

selecting means of executing the enumerated powers.

But the argument on which most reliance is placed, is drawn from the peculiar language of this clause. Congress is not empowered by it to make all laws, which may have relation to the powers conferred on the government, but such only as may be "*necessary and proper*" for carrying them into execution. The word "necessary" is considered as controlling the whole sentence, and as limiting the right to pass laws for the execution of the granted powers, to such as are indispensable, and without which the power would be nugatory. That it excludes the choice of means, and leaves to Congress, in each case, that only which is most direct and simple.

Is it true that this is the sense in which the word "necessary" is always used? Does it always import an absolute physical necessity so strong, that one thing, to which another may be termed necessary cannot exist without that other? We think it does not. If reference be had to its use, in the common affairs of the world, or in approved authors, we find that [illegible]

[illegible] end, and not as being confined to those single means, without which the end would be entirely unattainable. Such is the character [illegible]

[illegible] in a more mitigated sense—in that sense which common usage justifies. The word "necessary" is of this description. It has not a fixed character peculiar to itself. It admits of all degrees of comparison, and is often connected with other words, which increase

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which must be involved in the constitution, if that instrument be not a splendid bauble.

We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we th.nk the sound

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n ... are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are not prohibited, but consist with the letter and spirit of the constitution are constitutional.

If a corporation may be employed indiscriminately with other means to carry into execution the powers of the government, no particular reason can be assigned for excluding the use of a bank, if required for its fiscal operations To use one, must be within the discretion of Con

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After the most deliberate consideration, it is the unanimous and decided opinion of this court, that the act to incorporate the Bank of the United States is a law made in pursuance of the constitution, and is a part of the supreme law of the land

It being the opinion of the Court, that the act incorporat-

s uniformly understood, the word "commerce" to comprehend navigation. It was so understood, and must have een so understood, when the constitution was framed. he power over commerce, including navigation, was one f the primary objects for which the people of America dopted their government and must have been contem lated in forming it. The convention must have used the ord in that sense, because all have understood it in that ense and the attempt to restrict it comes too late.

If the opinion that "commerce" as the word is used in he constitution comprehends navigation also requires any dditional confirmation, that additional confirmation is, e think, furnished by the words of the instrument tself

The word used in the constitution, then, comprehends and has been always understood to comprehend navigation within its meaning and a power to regulate navigation is as expressly granted as if that term had been added to the word "commerce" To what commerce does this power extend? The constitution informs us, to commerce "with foreign nations and among the several states, and with the Indian tribes It has we believe been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations No sort of trade can be carried on between this country and any other to which this power does not extend It has been truly said that commerce as the word is used in the constitution, is a unit, every part of which is indicated by the term

If this be the admitted meaning of the word in its application to foreign nations it must carry the same meaning throughout the sentence and remain a unit, unless there be some plain intelligible cause which alters it. The subject to which the power is next applied is to commerce among the several states" The word "among" means intermingled with A thing which is among others is in-

[illegible] veen man and man in a state or between different parts of the same state and which does not extend to or affect other States Such a power would be inconvenient and is certainly unnecessary Comprehensive as the word among" is it may very properly be restricted to that commerce which con

States ... navigation within the limits of every state in the Union, ... manner connected

tion applies

But it has been urged with great earnestness that, although the power of congress to regulate commerce with foreign nations and among the several states, be coexten-

except so far as they have surrendered it by that instrument that this principle results from the nature of the government and is secured by the tenth amendment, that an affirmative grant of power is not exclusive unless in its own nature it be such that the continued exercise of it by the former possessor is inconsistent with the grant, and that this is not of that description

In discussing the question whether this power is still in the states in the case under consideration, we may dismiss from it the inquiry whether it is surrendered by the mere grant to congress or is retained until congress shall exercise the power We may dismiss that inquiry, because ... and the regulations which congress ... The

eign nations and among ...
lating it?

These acts were cited at the bar for the purpose of showing an opinion in congress that the states possess concurrently with the legislature of the Union the power to

supremacy not only of itself but of the laws made in pursuance of it The nullity of any act inconsistent with the constitution is produced by the declaration that the constitution is supreme law In every such case the act of congress or treaty is supreme and the law of the state, though enacted in the exercise of powers not controverted, must yield to it.

The court is aware that in stating the train of reasoning by which we have been conducted to this result, much time has been consumed in the attempt to demonstrate propositions which may have been thought axioms. But it was unavoidable

Powerful and ingenious minds, taking as postulates that the powers expressly granted to the government of the Union are to be [illegible] rowest possible [illegible] the states are to [illegible] will retain them [illegible] refined and metaphysical reasoning founded on these premises explain away the constitution of our country and leave it a magnificent structure indeed, to look at but totally unfit for use They may so entangle and perplex the understanding as to obscure principles which were before thought quite plain and induce doubts where, if the mind were to pursue its own course none would be [illegible]

[illegible]

Decree of Court of New York reversed and annulled and bill of Aaron Ogden dismissed

DRED SCOTT VS SANDFORD 1857

This is one of the most famous as well as history making decisions of the United States Supreme Court Its significance was actually more historic than constitutional in the sense that it helped to crystallize and sharpen the [illegible] opin on [illegible]

[illegible] slave was taken by his master from the slave state of Missouri to the free state of Illinois and then to the Wisconsin Territory where slavery was forbidden by the Missouri Compromise (1820) Scott was later brought back to Missouri and in 1846 he sued for his

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freedom on the ground that he had lived in free states. The case went to the Supreme Court, which ruled that Scott was not a citizen either of Missouri or of the United States and hence he could not sue in Federal courts.

There are two leading questions presented by the recor[illegible]

1. Had the Circuit Court of the United States jurisdi[illegible]tion to hear and determine the case between these partie[illegible] And,

2. If it had jurisdiction, is the judgment it has give[illegible] erroneous or not?

The plaintiff in error, who was also the plaintiff in th[illegible] court below, was, with his wife and children, held as slave[illegible] by the defendant, in the State of Missouri, and he brough[illegible] this action in the Circuit Court of the United States fo[illegible] that district, to assert the title of himself and his famil[illegible] to freedom

The declaration is . that he and the defendant ar[illegible] citizens of different States, that is, that he is a citizen o[illegible] Missouri, and the defendant a citizen of New York

The defendant pleaded in abatement to the jurisdictio[illegible] of the court, that the plaintiff was not a citizen of th[illegible] State of Missouri, as alleged in his declaration, being [illegible] negro of African descent whose ancestors were of pur[illegible] African blood, and who were brought into this country and sold as slaves

To this plea the plaintiff demurred, and the defendan[illegible] joined in demurrer

Before we speak of the pleas in bar, it will be prope[illegible] to dispose of the questions which have arisen on the ple[illegible] in abatement.

That plea denies the right of the plaintiff to sue in [illegible] court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated [illegible] qualify the plaintiff from [illegible]

[illegible]

S [illegible]

a[illegible]

[illegible] to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it

not given by that instrument, it is the duty of this court to declare it void and inoperative and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States

The counsel for the plaintiff has laid much stress upon that article in the Constitution which confers on Congress the power to "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" but, in the judgment of the court, that provision has no bearing on the present controversy and the power there given whatever it may be is confined, and was intended to be confined to the territory which at that time belonged to or was claimed by the United States and was within their boundaries as settled by the treaty with Great Britain and can have no influence upon a territory afterwards acquired from a foreign Government. It was a special provision for a known and particular territory and to meet a present emergency and nothing more

[illegible]

necessary to give the Government the power to sell any vacant lands [illegible]

[illegible] regulations in relation to any personal or movable property it might acquire there For the words *other property* necessarily by every known rule of interpretation must mean property of a different description from territory or land. And the difficulty would perhaps be insurmountable in endeavouring to account for the last member of the sentence which provides that "nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular State" or to say how any particular State could have claims in or to a territory ceded by a foreign Government, or to account for associating this provision with the preceding provisions of the clause with which it would appear to have no connection

But the power of Congress over the person or property of a citizen can never be a mere discretionary power under

among the class of persons who are not recognized as citizens, but belong to an inferior and subject race, and may deny him the privileges and immunities enjoyed by its citizens . .

. . . But if he ranks as a citizen of the State to which he belongs, within the meaning of the Constitution of the United States, then, whenever he goes into another State, the Constitution clothes him, as to the rights of person, with all the privileges and immunities which belong to citizens of the State And if persons of the African race are citizens of a state, and of the United States, they would be entitled to all of these privileges and immunities in every State, and the State could not restrict them, for they would hold these privileges and immunities, under the paramount authority of the Federal Government, and its courts would be bound to maintain and enforce them, the Constitution and laws of the State to the contrary notwithstanding

And upon a full and careful consideration of the subject, the court is of opinion that, upon the facts stated in the plea in abatement, Dred Scott was not a citizen of Missouri within the meaning of the Constitution of the United States, and not entitled as such to sue in its courts and, consequently, that the Circuit Court had no jurisdiction of the case, and that the judgment on the plea in abatement is erroneous

We proceed, therefore, to inquire whether the facts relied on by the plaintiff entitled him to his freedom

In considering this part of the controversy two questions arise 1st Was he, together with his family, free in Missouri by reason of the stay in the territory of the United States hereinbefore mentioned? And 2nd, If they were not, is Scott himself free by reason of his removal to Rock Island, in the State of Illinois as stated in the above admissions?

We proceed to examine the first question

The Act of Congress, upon which the plaintiff relies, declares that slavery and involuntary servitude except as a punishment for crime, shall be forever prohibited in all that part of the territory ceded by France under the name of Louisiana, which lies north of thirty six degrees thirty minutes north latitude, and not included within the limits of Missouri. And the difficulty which meets us at the threshold of this part of the inquiry is whether Congress was authorized to pass this law under any of the powers granted to it by the Constitution, for if the authority i

not given by that instrument, it is the duty of this court to declare it void and inoperative and incapable of conferring freedom upon any one who is held as a slave under the laws of any one of the States

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If this clause is construed to extend to territory acquired by the present Government from a foreign nation, outside of the limits of any charter from the British Government to a colony t would be difficult to say why it was deemed necessary to give the Government the power to sell any vacant lands belonging to the sovereignty which might be found w thin t and it this was necessary why the grant of this power should precede the power to legislate over it and establish a Government there and still more difficult to say why it was deemed necessary so specially and par ticularly to grant the power to make needful rules and regulat ons in relation to any personal or movable property it m ght acqu re there For the words *other property* nec essarily by every known rule of interpretation must mean property of a different description from territory or land. And the difficulty would perhaps be insurmountable in endeavouring to account for the last member of the sen tence wh ch provides that nothing in this Constitution shall be so construed as to prejudice any claims of the U n ted S ...

But the power of Congress over the person or property itizen can never be a mere discretionary power under

our Constitution and form of Government. The powers of the Government and the rights and privileges of the citizen are regulated and plainly defined by the Constitution itself. And when the Territory becomes a part of the United States, the Federal Government enters into possession in the character impressed upon it by those who created it. It enters upon it with its powers over the citizen strictly defined, and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a Government and sovereignty. It has no power of any kind beyond it, and it cannot, when it enters a Territory of the United States, put off its character, and assume discretionary or despotic powers which the Constitution has denied to it. It cannot create for itself a new character separated from the citizens of the United States, and the duties it owes them under the provisions of the Constitution. The Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out, and the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved. . . .

The rights of private property have been guarded with equal care. Thus the rights of property are united with the rights of person, and placed on the same ground by the fifth amendment to the Constitution . . . An Act of Congress which deprives a person of the United States of his liberty or property merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law. .

And this prohibition is not confined to the States, but the words are general, and extend to the whole territory over which the Constitution gives it power to legislate, including those portions of it remaining under territorial government, as well as that covered by States. It is a total absence of power everywhere within the dominion of the [illegible]

attempt, under the plea of implied or incidental powers. And if Congress itself cannot do this—if it is beyond the powers conferred on the Federal G[illegible]ment—it w[illegible]

It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which governments may exercise over it, have been dwelt upon in the argument.

But if the Constitution recognizes the right of property of the master in a slave, and makes no distinction between that description of property and other property owned by a citizen, no tribunal, acting under the authority of the United States, whether it be legislative, executive, or judicial, has a right to draw such a distinction, or deny to it the benefit of the provisions and guarantees which

traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United

which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

Upon these considerations, it is the opinion of the court that the Act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident.

Upon the whole, therefore, it is the judgment of this court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the sense

in which that word is used in the Constitution, and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it.

Its judgment for the defendant must, consequently, be reversed, and a mandate issued directing the suit to be dismissed for want of jurisdiction

Ex Parte Milligan, 1866

The significance of this case lies in its rejection of military tribunals of justice in regions where civilian courts existed. The case is therefore basic to civil liberties It is an eloquent reaffirmation of the rights of Americans under the Constitution

Background *On October 15 1863 President Lincoln, after authorization by Congress suspended the writ of habeas corpus in cases of persons arrested for military offenses Under this authority the army arrested a civilian named Milligan, tried him by a military commission and condemned him to be hanged Milligan petitioned the United States Circuit Court for a writ of habeas corpus The court in the following opinion written by Justice Davis reversed the military sentence and ruled that Milligan should have been given a civilian trial with all the constitutional guarantees*

The importance of the main question presented by this record cannot be overstated for it involves the very framework of the government and the fundamental principles of American liberty

The controlling question in the case is this Upon the *facts* stated in Milligan's petition and the exhibits filed, had the military commission mentioned in it *jurisdiction*, *legally*, to try and sentence him? Milligan not a resident of one of the rebellious states or a prisoner of war, but a citizen of Indiana for twenty years past and never in the military or naval service is while at his home, arrested by the military power of the United States imprisoned, and, on certain criminal charges preferred against him, tried, convicted and sentenced to be hanged by a military commission organized under the direction of the military commander of the military district of Indiana. Had this tribunal the legal power and authority to try and punish this man?

No graver question was ever considered by this court, nor one which more nearly concerns the rights of the whole people for it is the birthright of every American

citizen when charged with crime, to be tried and punished [illegible]

may be, or how much his crimes may have shocked the sense of justice of the country or endangered its safety By the protection of the law human rights are secured, withdraw that protection, and they are at the mercy of wicked rulers, or the clamor of an excited people If there was law to justify this military trial, it is not our province to interfere, if there was not, it is our duty to declare the nullity of the whole proceedings The decision of this question does not depend on argument or judicial precedents, numerous and highly illustrative as they are These precedents inform us of the extent of the struggle to preserve liberty, and to relieve those in civil life from military trials. The founders of our government were familiar with the history of that struggle and secured in a written Constitution every right which the people had wrested from power [illegible]

plicable to this case are found in that clause of the original Constitution which says "That the trial of all crimes except in case of impeachment shall be by jury", and in the fourth fifth and sixth articles of the amendments

Time has proven the discernment of our ancestors, for even these provisions expressed in such plain English words that it would seem the ingenuity of man could not evade them, are now after the lapse of more than [illegible] years, sought t[illegible] United States [illegible] war and in pea[illegible] tion all classes of men at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the [illegible]

[illegible] all the powers granted to it which are necessary to preserve its existence, as has been happily

limits, on the plea of necessity, with the approval of the Executive, substitute military force for, and to the exclusion of, the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules

The statement of this proposition shows its importance for, if true, republican government is a failure, and there is an end of liberty regulated by law Martial law, established on such a basis, destroys every guarantee of the Constitution, and effectually renders the "military independent of, and superior to, the civil power,"—the attempt to do which by the king of Great Britain was deemed by our fathers such an offense, that they assigned it to the world as one of the causes which impelled them to declare their independence Civil liberty and this kind of martial law cannot endure together, the antagonism is irreconcilable and, in the conflict, one or the other must perish.

This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln, and if this right is conceded and the calamities of war again befall us, the dangers to human liberty are frightful to contemplate If our fathers had failed to provide for just such a contingency, they would have been false to the trust reposed in them They knew—the history of the world told them—the nation they were founding be its existence short or long, would be involved in war how often or how long continued, human foresight could not tell, and that unlimited power wherever lodged at such a time, was especially hazardous to freemen For this and other equally weighty reasons they secured the inheritance they had fought to maintain, by incorporating in a written Constitution the safeguards which time had proved were essential to its preservation Not one of these safeguards can the President, or Congress or the judiciary disturb, except the one concerning the writ of habeas corpus

It is essential to the safety of every government that, in a great crisis like the one we have just passed through, there should be a power somewhere of suspending the writ of habeas corpus In every war there are men of previously good character, wicked enough to counsel their fellow-citizens to resist the measures deemed necessary by a good government to sustain its just authority and overthrow its enemies, and their influence may lead to dangerous

binations In the emergency of the times, an immediate public investigation according to law may not be *possible*; and yet the peril to the country may be too imminent to suffer such persons to go at large Unquestionably, there is then an exigency which demands that the government, if it should see fit, in the exercise of a proper discretion, to make arrests, should not be required to produce the persons arrested in answer to a writ of habeas corpus The Constitution goes no further It does not say after a writ of habeas corpus is denied a citizen, that he shall be tried otherwise than by the course of the common law, *if it had* intended this result, it was easy by the use of direct words to have accomplished it. The illustrious men who framed that instrument were guarding the foundations of civil liberty against the abuses of unlimited power; they were full of wisdom and the lessons of history informed them that a trial by an established court, assisted by an impartial jury, was the only sure way of protecting the citizens against oppression and wrong Knowing this, they limited the *suspension* to one great right and left the rest to remain forever inviolable But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained If this were true, it could be well said that a country preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation Happily it is not so

It will be borne in mind that this is not a question of the power to proclaim martial law when war exists in a community and the courts and civil authorities are overthrown. Nor is it a question what rule a military commander, at the head of his army can impose on states in rebellion to cripple their resources and quell the insurrection The jurisdiction claimed is much more extensive The necessities of the service during the late rebellion, required that the loyal states should be placed within the limits of certain military districts and commanders appointed in them, and it is urged that this in a military sense, constituted

ployed in another locality where the laws were obstructed and the national authority disputed On *her* soil there was no hostile foot if once invaded, that invasion was at an end, and with it all pretext for martial law Martial law

cannot arise from a threatened invasion The necessity must be actual and present, the invasion real, such as effectually closes the courts and deposes the civil administration

It is difficult to see how the safety of the country required martial law in Indiana If any of her citizens were plotting treason, the power of arrest could secure them, until the government was prepared for their trial, when the courts were open and ready to try them It was as easy to protect witnesses before a civil as a military tribunal, and as there could be no wish to convict, except on sufficient legal evidence, surely an ordained and established court was better able to judge of this than a military tribunal composed of gentlemen not trained to the profession of the law

It follows from what has been said on this subject, that there are occasions when martial rule can be properly applied If, in foreign invasion or civil war, the courts are actually here closed and it is impossible to administer crim [illegible] *of active*

overthrown to preserve the safety of the army and society, and as no power is left but the military it is allowed to govern by martial rule until the laws can have their free course As necessity creates the rule so it limits its duration for if this government is continued after the courts are reinstated, it is a gross usurpation of power Martial rule can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction It is also confined to the locality of actual war Because during the late rebellion it could have been enforced in Virginia, where the national authority was overturned and the courts driven out it does not follow that it should obtain in Indiana, where that authority was never disputed and justice was always administered

Mr Chief Justice Chase for himself and Mr Justice Wayne, Mr Justice Swayne and Mr Justice Miller delivered an opinion in which he differed from the court in several important points but concurred in the judgement in the case.

GITLOW VS PEOPLE OF NEW YORK 1925

In this decision, written by Justice Sanford the Supreme Court upheld the validity of the New York Criminal Anar

ment of private agreements does not amount to state action, or in any event, the participation of the State is so attenuated in character as not to amount to state action within the meaning of the Fourteenth Amendment Finally, it is suggested, even if the States in these cases may be deemed to have acted in the constitutional sense, their action did not deprive petitioners of rights guaranteed by the Fourteenth Amendment

II

That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court

One of the earliest applications of the prohibitions contained in the Fourteenth Amendment to action of state judicial officials occurred in cases in which Negroes had been excluded from jury service in criminal prosecutions by reason of their race or color These cases demonstrate, also the early recognition by this Court that state action in violation of the Amendment s provisions is equally repugnant to the constitutional commands whether directed by state statute or taken by a judicial official in the absence of statute

In numerous cases this Court has reversed criminal convictions in state courts for failure of those courts to provide the essential ingredients of fair hearing

But the examples of state judicial action which have been held by this Court to violate the Amendment s commands are not restricted to situations in which the judicial proceedings were found in some manner to be procedurally unfair It has been recognized that the action of state courts in enforcing a substantive common law rule formulated by those courts may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process Thus in American Federation of Labor v Swing 1941 312 U S 321 enforcement by state courts of the common law policy of the State, which resulted in the restraining of peaceful picketing was held to be state action of the sort prohibited by the Amendment s guaranties of freedom of discussion. In Cantwell v Connecticut 1940 310 U S 296 a convic-